

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

John McBrearty	:	No. 02-4553
Carl McBrearty and Nina McBrearty	:	
vs.	:	JURY TRIAL DEMANDED
Delaware County Sheriff's Department	:	
Norwood Borough Police Department	:	
Delaware County and Media Borough	:	

**RESPONSE TO PLAINTIFFS' PETITION FOR
COUNSEL EXPENSES**

Defendants, County of Delaware and Delaware County Sheriff's Department, by and through their attorneys, Holsten & Associates, hereby file this Response to Plaintiffs, John McBrearty, Carl McBrearty and Nina McBrearty's Petition for Counsel Expenses.

1. Plaintiffs filed a Complaint against the Responding Defendants on July 9, 2002 and paid a filing fee of \$150.00.

2. Responding Defendants filed a Motion to Dismiss Plaintiffs' Complaint or in the alternative, for more definite statement on October 21, 2002.

3. The Plaintiffs then filed a Motion requesting leave to file an Amended Complaint on December 13, 2002 and on December 17, 2002 filed the Amended Complaint.

4. On April 14, 2003, this Honorable Court denied the Responding Defendants Rule 12(b)(6) Motion filed in Response to the Plaintiffs' original Complaint. The Court permitted the Responding Defendants to renew Motions to Dismiss based on Plaintiffs' Amended Complaint and a new Motion to Dismiss was filed by the Responding Defendants on April 30, 2003.

5. Plaintiffs responded to the Defendants' Dismissal Motions on May 5, and on May 29, 2003, the Court denied the Responding Defendants new 12(b)(6) Motion filed in Response to Plaintiffs' Amended Complaint.

6. A Rule 16 Conference was held before the Honorable Lagrome Davis on July 8, 2003 and was attended by the Responding Defendants, counsel for Defendant Borough of Norwood and John

McBrearty only. The Plaintiffs Carl and Nina McBrearty failed to appear.

7. Pursuant to the discussions that took place during the Rule 16 Conference with Judge Davis, an Order was filed that all discovery shall be completed by September 8, 2003 with Summary Judgment Motion to be filed on or before September 29, 2003.

8. Plaintiffs have filed a Petition for Counsel Expenses on July 14, 2003, a copy of which is attached as Exhibit "A" to this Response.

9. During the Rule 16 Conference before Judge Davis, John McBrearty admitted to the Court that he is presently working.

10. On July 10, 2003, John McBrearty advised counsel for the Responding Defendants that Carl McBrearty and Nina McBrearty are both employed and do not rely upon John McBrearty, their father, for support.

11. The Complaint and Amended Complaint of the McBreartys alleges that Defendant Delaware County did not issue a permit for "peaceful one man demonstration."

12. At the Rule 16 Conference, Mr. McBrearty admitted that he withdrew his application for the permit for the "peaceful demonstration" and therefore, this issue is moot.

13. Counsel for the Responding Defendants has offered to walk with Mr. McBrearty, through the County of Delaware offices to help him obtain a permit if he wishes to proceed with his "peaceful one man demonstration."

14. The remaining allegations filed by the McBreartys allege that the Sheriff of Delaware County evicted the McBreartys from their home in Norwood Borough based on false information supplied by Mr. McBrearty's ex-wife Belinda McBrearty.

15. Plaintiffs also allege that the Sheriff's Department knew that the information in the Eviction Order and the Protection from Abuse Order, was false even though Belinda McBrearty signed a Verification attached to Petition and an Order was signed by the Honorable Ann Osborne of the Delaware County Court of Common Pleas granting the PFA and ordering that the McBreartys be evicted from their home in Norwood

Borough.

16. The Sheriff's Department has qualified immunity in this matter as they were acting on an Order signed by a Court of Common Pleas Judge.

17. John McBrearty has been in a long and tortured divorce proceeding with his ex-wife, Belinda McBrearty and has refused to admit jurisdiction of the Delaware County Court of Common Pleas to hear and decide the Divorce Petition or the marital property disposition.

18. Mr. McBrearty is "mad at the world" and believes that by attacking the Sheriff's Department which executed a duly signed Order of a duly elected and appointed Judge of the Court of Common Pleas, he can somehow get some satisfaction after failing to prevail in the Court of Common Pleas and the Superior Court of Pennsylvania on numerous issues.

19. The McBreartys have a tenuous cause of action at best and have sufficient assets in which to pursue their matter in federal court.

20. Mr. McBrearty is still upset with a Common Pleas Court Order that he pay for his wife's legal fees involved with the divorce and the eviction. He believes that by filing a lawsuit against the County of Delaware and the Sheriff's Department, that the Responding Defendants should pay his legal costs to date including the divorce litigation. When advised by this Honorable Court at the Rule 16 Conference, that the costs incurred by the McBreartys in this matter shall be borne by the McBreartys, it was then and only then, that the McBreartys decided that they should Petition this Court for counsel expenses.

21. It is obvious from reading the Complaint and the Amended Complaint as well as the Responses to the 12(b)(6) Motions to Dismiss, that the McBreartys are competent, educated and able to pursue their matter *pro se* without the Court incurring costs by appointing an attorney to represent them in this questionable lawsuit.

22. John McBrearty has been given the opportunity to have his "peaceful demonstration" at the courthouse and the offer remains open to allow him to so demonstrate.

23. The McBreartys were evicted from their house based on a divorce action that lasted over 5 years and was handled by no less than 3 Judges in the Delaware County Court of Common Pleas. The McBreartys did not lose their house based on any actions of the County of Delaware or the Sheriff's Department of Delaware County.

24. John McBrearty has gone through no less than 3 attorneys during the course of his divorce and property settlement action and each of them have quit representing this individual because of his inability to accept law and procedure in the Commonwealth of Pennsylvania.

25. The McBreartys are attempting to do an end run to find an attorney when each and every attorney they have attempted to retain has reviewed the documents and refused to continue representing these 3 individuals.

26. The McBreartys are not without funds to hire an attorney nor are they incapable of hiring an attorney on a contingency fee basis if they believe that the potential verdict in this matter is any where between \$3,000,000 and \$7,000,000. The McBreartys received their share of the proceeds of the sale of the property from which they were evicted.

27. The depositions of the McBreartys are scheduled for Thursday, July 31, 2003.

28. Any attorney hired by the McBreartys would require them to pay for the deposition transcripts and it is believed and averred that the McBreartys, combined, have sufficient funds to purchase one copy of each transcript and adequately represent themselves through the discovery process and trial if need be.

29. There are no complicated legal issues in this matter; (1) either the County refused to issue a permit or the Plaintiff John McBrearty withdrew his application; (2) either the Sheriff's Department had a duly signed authorized Order from the Honorable Ann Osborne of the Delaware County Court of Common Pleas to evict all three of the McBreartys or there was no such Order. The remaining averments in the Petition for Counsel Expenses do not merit a response except to say this case and Plaintiffs do not merit having Court appointed counsel selected for them and every attorney that they have

approached to date has fired them or refused to take their case.

30. It is respectfully requested that this Honorable Court deny Plaintiffs' Petition for Counsel Expenses.

Respectfully Submitted,

HOLSTEN & ASSOCIATES

BY:

**Thomas C. Gallagher, Esquire
Attorney for Defendant, Delaware County
Sheriff's Department and Delaware County,
ONLY**

Dated:

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

John McBrearty	:	No. 02-4553
Carl McBrearty and Nina McBrearty	:	
vs.	:	JURY TRIAL DEMANDED
Delaware County Sheriff's Department	:	
Norwood Borough Police Department	:	
Delaware County and Media Borough	:	

CERTIFICATE OF SERVICE

I, Thomas C. Gallagher, Esquire, counsel for Defendants, Delaware County Sheriff's Department and Delaware County, only, hereby state that a true and correct copy of Defendants Response to Plaintiff's Petition for Counsel Expenses has been sent to the following, via first class mail on the 24th day of July, 2003:

John McBrearty
928 Delview Drive
Folcroft, PA 19032

Carl J. DiCampi, Esquire
Margolis Edelstein
The Curtis Center, Fourth Floor
Independence Square West
Philadelphia, PA 19106-3304

Carl McBrearty
c/o John McBrearty
928 Delview Drive
Folcroft, PA 19032

Nina McBrearty
c/o John McBrearty
928 Delview Drive
Folcroft, PA 19032

**Respectfully Submitted,
HOLSTEN & ASSOCIATES**

BY: _____
Thomas C. Gallagher, Esquire
Attorney for Defendant, Delaware County Sheriff's
Department and Delaware County, ONLY

EXHIBIT “A”

JOHN McBREARTY
928 DELVIEW DRIVE
FOLCROFT PENNSYLVANIA 19032
(610) 534-2002

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN McBREARTY
CARL McBREARTY
NINA McBREARTY

Plaintiff

vs.

DELAWARE COUNTY SHERRIFFS DE-
PARMENT
NORWOOD BOROUGH POLICE DE-
PARTMENT
DELAWARE COUNTY
MEDIA BOROUGH

Defendant

CIVIL ACTION NO. 02-4553

PETITION FOR COUNCIL EXPENSES

Plaintiffs, John McBrearty, Carl McBrearty, and Nina McBrearty, moves this Honorable Court to accept this petition for council expenses, pursuant to order dated July 7 2003.

The plaintiffs, even though they all enjoy employment, do not have the types of jobs that would produce the money that is needed. When I was actively seeking help from law firms, the firms that would handle this case wanted 5,000 to look at it. The plaintiffs together cannot afford that.

JUL 14 2003

It is the plaintiffs belief that one law firm should represent us together.

I would like to apologize to all for stepping out of line when I was digging for information. I called May, Maryann Graces secretary and I was looking for a copy of the written statement I provided to Maryann about our protest desires. I called Tom Gallagher immediately after and told him what I was doing and why. He was very upset with me. I wasn't aware that I should not behave like that. I meant no disrespect. We don't want to cheat to win.

Events like this could be avoided if the court could provide some help.

It is the Plaintiffs intentions to see 10 million from experiencing this event, 3 from the process, and 7 from the book rights. If the court assists us with this petition, there is a possibility that a jury could award considerably more. The plaintiffs have no intention of collecting that money if any would result. We our not entitled to that money because on our own we cannot produce those results, I would be more conservative with the jury than a law firm would be. Money that gets generated from the assistance of council should be donated in the form of a grant in the judges name or anonymous to a university , or a kinder care program , something with an established civil merit.

Respectfully Submitted,



John McBrearty

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JOHN MCBREARTY;
CARL MCBREARTY; and
NINA MCBREARTY**

v.

**DELAWARE COUNTY SHERIFFS
DEPARTMENT; NORWOOD BOROUGH
POLICE DEPARTMENT; DELAWARE
COUNTY; and MEDIA BOROUGH**

CIVIL ACTION NO: 02-4553

CERTIFICATE OF SERVICE

I, John McBrearty , hereby state that a true and correct copy of the Plaintiffs Petition for council expenses, has been sent via First Class mail to the following .

Carl DiCampi, Esquire
Margolis Edelstein
The Curtis Center, 4 th floor
Independence Square West
Philadelphia, PA 19106-3304

Thomas Gallagher, Esquire
Holsten & Associates
One Olive Street
Media, PA 19063


James Caponi, Esquire
Marshall, Dennehey, Warner
Coleman & Goggin
Suite 1002, One Montgomery Plaza
Norristown, PA 19401

Clerk of Court
United States District Court
601 Market Street
Philadelphia, PA 19106-1797

John & Carl McBrearty
Hand delivered
928 Delview Drive
Folcroft, PA 19032-1706

Nina McBrearty
Hand delivered
316 E. 21st Street
Chester, PA 19013

July 12 2003



John McBrearty